

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0466P

**Sales and Use Tax
For Tax Years 1999, 2000 and 2001**

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ISSUE

I. Tax Administration—Negligence Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests imposition of a ten percent (10%) negligence penalty.

STATEMENT OF FACTS

Taxpayer operates a chain of auto parts stores. As the result of an audit for the tax years 1999 through 2001, the Indiana Department of Revenue ("Department") issued proposed assessments for unpaid use taxes. The assessments included a ten percent (10%) negligence penalty for each assessment. Taxpayer protests the imposition of penalties. Further facts will be provided as necessary.

I. Tax Administration—Negligence Penalty

DISCUSSION

Taxpayer protests the imposition of a ten percent negligence penalty on assessments for tax years 1999, 2000 and 2001. The Department imposed the negligence penalty due to underpayment of use tax for the three years in question, as provided in IC 6-8.1-10-2.1.

Taxpayer paid the amounts of the underlying assessments, but did not pay the full assessment equal to the penalty amounts. Taxpayer states that it has paid thousands of dollars of taxes to the State of Indiana in the past, and that its failure to pay the full amount of taxes due was not intentional and will not happen in the future.

The Department refers to 45 IAC 15-11-2(b), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

Also, 45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

The assessments imposed as the result of the Department's audit were due to taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. This qualifies as negligence under 45 IAC 15-11-2(b). Taxpayer has not affirmatively established that failure to pay the full amount of tax due for 1999, 2000 and 2001 was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

FINDING

Taxpayer's protest is denied.

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